

RESULTS OF INVESTIGATION: Analysis showed that the article was undergoing chemical decomposition.

LIBELED: On or about 7-8-64, N. Dist. Fla.

CHARGE: 402(a) (3)—contained a decomposed substance when shipped.

DISPOSITION: 9-1-64. Default—destruction.

29685. Tomato catsup. (F.D.C. No. 50094. S. No. 42-314 A.)

QUANTITY: 65 cases, each containing 24 1-lb. 15-oz. cans, at Idaho Falls, Idaho.

SHIPPED: 3-27-64, from Ogden, Utah, by Utah Packers, Inc.

LABEL IN PART: (Can) "Pierce's Tomato Catsup * * * Distributed by Utah Packers, Inc. Ogden Utah."

LIBELED: 5-26-64, Dist. Idaho.

CHARGE: 402(a) (3)—contained decomposed tomato material when shipped.

DISPOSITION: 6-24-64. Default—destruction.

SPICES, FLAVORS, AND SEASONING MATERIALS*

29686. Mayonette dressing and Frenchette dressing. (F.D.C. No. 44927. S. Nos. 32-629 R, 36-049 R.)

QUANTITY: 20 cases, each containing 12 13-oz. jars of Mayonette dressing, and 31 cases, each containing 24 6-oz. btl., of Frenchette dressing, at Jamaica, N.Y.

SHIPPED: Between 6-29-60 and 8-18-60, from Jersey City, N.J. by Frenchette, Div. of Carter Products, Inc.

LABEL IN PART: (Jar) "Mayonette Low Calorie Replacement for Whip Salad Dressing and Mayonnaise * * * Only 8 Calories in a Full Tsp. * * * The Frenchette Div. of Carter Products, Inc. N.Y. Dist." (paper collar on jar) "80% LESS CALORIES than mayonnaise * * * Also Try Frenchette all the superb flavor of finest French Dressing * * * Italianette all the tangy flavor of real Italian Dressing," (btl.) "Non-Fattening FRENCHETTE Brand Dressing for Salads * * * Approx. 1 Calorie per Tablespoon * * * The Frenchette Div. of Carter Products, Inc., N.Y. Dis." (paper collar on btl.) "Approx. 1 Calorie per tablespoon Regular Dressing 60 Calories Per Spoon * * * Also Try Low Calorie Italianette and Mayonette."

RESULTS OF INVESTIGATION: Examination of the articles showed that the Mayonette dressing was a pale, pasty, semisolid with a taste, odor, and general appearance similar to mayonnaise, and that it contained approximately 13.5% fat by weight; and that the Frenchette dressing was a viscous, orange-colored liquid with a strong aroma of vinegar and paprika, similar in appearance to emulsified french dressing, and that it contained 0.35% fat by weight.

LIBELED: 10-13-60, E. Dist. N.Y.

CHARGE: Mayonette: 403(a)—the name of the article, "Mayonette Low Calorie" and the declaration "Whip Salad Dressing and Mayonnaise," were misleading in that they suggested and implied that the article was a low calorie mayonnaise which it was not; 403(a)—the label statements "Frenchette superb flavor of finest French Dressing," and "Italianette all the tangy flavor of real Italian Dressing," contained false and misleading representations that "Frenchette" was french dressing and "Italianette" was italian dressing;

*See also No. 29635.

403(c)—the article was an imitation of another food, namely, mayonnaise, and its label failed to bear the word "Imitation" and immediately thereafter the name of the food imitated, namely, mayonnaise; 403(f)—the ingredients declaration, the quantity of contents statement, the firm name and address, and information required by the regulations for special dietary foods, were not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use; 403(g) (1)—the article purported to be and was represented as mayonnaise, a food for which a definition and standard of identity has been prescribed by regulations, and it failed to conform to such definition and standard; and 403(i) (2)—the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient since "veg. oil," "algin deriv." and "antioxidant" are not the common or usual names of those ingredients;

Frenchette: 403(a)—the name of the article "Frenchette Dressing for Salads," was misleading in that it suggested and implied that the article was french dressing which it was not; 403(a)—the label statement "Also Try Low Calorie * * * Mayonette" was false and misleading, since "Mayonette" was not low in calories; 403(c)—the article was an imitation of another food, namely, french dressing, and its label failed to bear the word "Imitation" and immediately thereafter the name of the food, namely, french dressing, imitated; 403(f)—the firm name and address, and the quantity of contents statement, were not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use; and 403(g) (1)—the article purported to be and was represented as french dressing, a food for which a definition and standard of identity has been prescribed by regulations, and it failed to conform to such definition and standard.

DISPOSITION: On 11-4-60, the articles were claimed by Carter Products, Inc. On 6-19-61, the Government filed written interrogatories and on 7-21-61, the claimant filed written interrogatories. On 9-14-61, the claimant objected to the interrogatory numbered 5 by the Government, which asked for complete qualitative and quantitative formulas for Mayonette, Frenchette, and Italianette dressings on the grounds that quantitative formulas were trade secrets. Claimant submitted answers to other interrogatories on 9-22-61.

The Government opposed claimant's objection to interrogatories and objected to interrogatories of the claimant relating to other products which purported to be low in calories, and relating to variations of other foods for which standards had been promulgated, and relating to other "imitation" products. Other interrogatories were answered by the Government.

On 10-13-61, the court ruled on the objections, delivering the following opinion:

RAYFIEL, *District Judge*: "These are cross-motions. The claimant has objected to the libelant's interrogatory No. 5, and the libelant has objected to claimant's interrogatories Nos. 79-89, inclusive, 116-18, inclusive, 120-126(a), inclusive, 138-142, inclusive, and 149. Most of the interrogatories propounded by the claimant involve a claim of discrimination on the part of the Government. As I indicated during the course of the arguments of the motions, none of claimant's interrogatories, save for No. 149, is relevant to the issues herein.

"I have read *Yick Wo vs. Hopkins*, 118 U.S. 356 and *Consumers Union of the United States vs. Walker*, 145 F. 2d 33, to which the claimant's counsel

invited the Court's attention in support of his argument. The first of those cases is entirely inapposite. As to the second, while the question of discrimination may, in part, have influenced the Court's decision, the crux thereof undoubtedly was its conclusion that neither the text nor the manner of distribution of the report in question was violative of the statute involved in the case. Moreover the question of discrimination is not relevant *to the case at bar*.

"Accordingly, the libelant's objections to the aforementioned interrogatories of the claimant, except for No. 149, are sustained. As to No. 149, the libelant will furnish to the claimant copies of all correspondence between them since April 2, 1957 which related to the products involved in this case.

"Claimant's objection to libelant's interrogatory No. 5 is overruled, except that the quantitative formula or analysis of each of the products therein referred to shall be sealed and kept in the custody of the Clerk of this Court until the trial of the case, at which time it will be delivered to the trial judge for such use as he may deem proper.

"Settle order on notice."

In accord with this opinion, and the order entered pursuant thereto on 11-17-61, the Government answered the interrogatory and submitted copies of the communications; and the claimant submitted a sealed copy of the quantitative formula to the Clerk, and also submitted the qualitative formula.

In November 1962, the Government moved for summary judgment, and on 12-7-62, the claimant filed its Statement of Material Fact Showing a Genuine Issue To Be Tried. Subsequently, the claimant withdrew its answer, and a default decree ordering destruction of the goods was entered 1-8-63.

29687. Cinnamon and black pepper. (F.D.C. No. 48947. S. Nos. 17-685/6 V.)

QUANTITY: 310 cases, each containing 12 cans of pepper, and 71 ctns., each containing 12 cans of cinnamon, at Nashville, Tenn., in possession of Cumberland Manufacturing Co.

SHIPPED: Between 1-15-63 and 2-20-63, from New Orleans, La., San Francisco, Calif., and Brooklyn, N.Y.

LABELS IN PART: (Cans) "Windsor Brand Ground Cinnamon One Ounce Net Weight [or "Pure Ground Black Pepper Net Wt. 4 Ozs.]" Packed by Cumberland Mfg. Co., Nashville, Tenn."

RESULTS OF INVESTIGATION: The articles had been repacked by the dealer from bulk stocks. The pepper was approximately 4 percent short weight and the cinnamon, approximately 7 percent short weight.

LIBELED: 5-6-63, M. Dist. Tenn.

CHARGE: 403(e) (2)—while held for sale, the articles failed to bear a label containing an accurate statement of the quantity of the contents, since the label statements (Pepper) "Net Wt. 4 Ozs." and (Cinnamon) "One Ounce Net Weight" were inaccurate.

DISPOSITION: 6-19-63. Default—delivered to a charitable institution.

29688. Mustard seed. (F.D.C. No. 49599. S. Nos. 36-762 X, 38-637 X.)

QUANTITY: 168 100-lb. bags of yellow mustard seed and 263 100-lb. unlabeled bags of brown mustard seed at Gretna, La.

SHIPPED: 4-27-63 and 5-20-62, from Power, Mont.

LIBELED: 1-16-64, E. Dist. La.

CHARGE: 402(a) (3)—contained rodent urine while held for sale.

DISPOSITION: 7-28-64. Default—destruction.